

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD
DOCKET NO.: 11-1010

Robert Carasitti,
Appellant

v.

John Kelly,
Appellees

BOARD'S RULING ON APPEAL

Introduction

This matter came before the State Building Code Appeals Board ("Board") on appellant's appeal filed pursuant to G.L. c.143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3 the appellant petitioned the Board to make a determination based on the Eighth Edition of the Massachusetts State Building Code ("Code"). For the following reasons, the appellant will be granted a variance from 780 CMR 705.8 to allow a greater amount of protected exterior openings and from 780 CMR 403.6.1 to allow the installation of a vestibule smoke proof enclosure in lieu of a fire service access elevator.

The appellant requested that the Board grant a variance from 780 CMR 705.8 to allow a greater amount of protected exterior openings in lieu of the percentage for unprotected openings permitted by Section 705.8 and from 780 CMR 403.6.1 to allow the installation of a vestibule smoke proof enclosure in lieu of a fire service access elevator. Robert Carasitti, George Tremblay, Michael Conlon, Bob Walsh, Jeffrey Ganem, and Joseph Sansoucy appeared on behalf of the appellant. All witnesses were duly sworn.

Procedural History

The Board convened a public hearing on June 21, 2011, in accordance with G.L.c. 30A, §§10 & 11; G.L.c. 143, §100; 801 CMR 1.02; and 780 CMR 122.3. All interested parties were provided with an opportunity to testify and present evidence to the Board.

Findings of Fact

The Board bases the following findings upon the testimony presented at the hearing. There is substantial evidence to support the following findings:

1. The property at issue is located at 1 Mercantile Street, Building H, Worcester, MA 01610.
2. The subject of this appeal is related to the Code's provisions regarding exterior openings and the Code's fire service access elevator requirement.
3. The subject property is a new construction high-rise building.

4. The east façade of the building faces a parking garage and conforms to the Code's criteria for fire separation distances of zero to three feet and beyond ten feet.
5. In the three foot to five foot zone, a property is permitted 15% unprotected openings.
6. In the five foot to ten foot zone, a property is permitted 25% unprotected openings.
7. The subject property's proposed amount of openings in the three foot to five foot and five foot to ten foot zones exceed the permitted percentages for unprotected openings.
8. The subject property was designed to be compliant with the 7th edition of the Code and therefore included a vestibule smoke proof enclosure stairway.
9. The building was subsequently redesigned to conform to the 8th edition of the Code, which does not require a vestibule smoke proof enclosure stairway, and the smoke proof enclosure system was removed.
- ~~10.~~ An amendment to the 8th edition of the Code, which requires a fire service access elevator for all high-rise buildings, went into effect in January 2011.

Analysis

A. Jurisdiction of the Board

There is no question that the Board has jurisdiction to hear this case. The governing statute provides that:

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, except any specialized codes as described in section ninety-six, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. G.L. c.143, §100.

The issues giving rise to this matter directly implicate provisions of the Code. As such, this Board has jurisdiction to decide this case pursuant to G.L. c. 143, §100.

B. State Building Code requirements

The issue in this case is whether the appellant shall be granted a variance from 780 CMR 705.8 to allow a greater amount of protected exterior openings and from 780 CMR 403.6.1 to allow the installation of a vestibule smoke proof enclosure in lieu of a fire service access elevator.

780 CMR 705.8 limits the amount of permitted openings in exterior walls based on fire separation distance for the purpose of minimizing fire exposure from one building to another. For fully sprinklered buildings, the Code allows 15% unprotected openings in the 3-5 foot zone and 25% in the 5-10 foot zone. The appellant is requesting five protected openings in both the 3-5 foot zone and the 5-10 foot zone. The appellant testified the windows will be inoperable, fixed glazing protected with automatic sprinklers.

Under the 8th edition of the Code, 780 CMR 403.6.1 requires a fire service access elevator in all high-rise buildings. The appellant testified that the building was designed under the 7th edition of the Code and included a vestibule smoke proof enclosure stairway. The appellant testified that the project went on hold for economic reasons and when construction resumed, the first publication of the 8th edition of the Code was in effect. The appellant testified that the building was redesigned to

conform to the first publication of the 8th edition of the Code, which did not require a vestibule smoke proof enclosure. The appellant testified that the 8th edition of the Code was subsequently revised to require a fire service access elevator in all high-rise buildings. The appellant testified that it would be a hardship to reconfigure the core of the building to include a compliant fire service access elevator, but that it would be possible to reincorporate the vestibule smoke proof enclosure stairway consistent with the 7th edition of the Code.

Conclusion

A motion was made by Jacob Nunnemacher and seconded by Brian Gale to **grant** a variance to 780 CMR 705.8 to allow a greater amount of protected exterior openings provided that the windows are inoperable and fixed glazing protected with automatic sprinklers, and from 780 CMR 403.6.1 to allow the installation of a vestibule smoke proof enclosure in lieu of a fire service access elevator given that it would be a hardship to install a fire service access elevator and that the city has no objection.

Brian Gale

Jacob Nunnemacher

Doug Semple

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.

DATED: November 7, 2011